

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL CASE NO. H-07-351
	§	
DIANNE WINZER and	§	
DEANDREA WADE	§	

MEMORANDUM AND ORDER

Defendants Dianne Winzer and Deandrea Wade have filed a Motion for New Trial (“Motion”) in which they argue first that there was unlawful joinder with co-defendant Eric Amoako, who called Ben Lambeth as a witness. To prevail on this argument, Defendants must demonstrate “clear, specific and compelling prejudice that resulted in an unfair trial.” *United States v. Simmons*, 374 F.3d 313, 317 (5th Cir. 2004) (citation omitted). In this case, the United States has shown that they would have called Ben Lambeth as a witness against Defendants even if Amoako had been tried separately. Consequently, the evidence against Defendants would have supported their convictions even if their trials had not been joined with Amoako’s. Defendants have failed to show that they suffered prejudice and an unfair trial as a result of the allegedly improper joinder with Amoako.


Defendants also argue there was insufficient evidence to support their convictions because the Government’s primary witnesses were “greatly discredited.”

The credibility of witnesses is exclusively within the province of the jury. *United States v. Parker*, 505 F.3d 323, 331 (5th Cir. 2007). The documentary evidence coupled with the testimony of Sandra Johnson and Theresa Williams, if believed by the jury, is sufficient to support the verdict as to Defendants Winzer and Wade on each count for which the jury returned a verdict of guilty.

Defendant Wade argues that she is entitled to a new trial because the jury's verdict, finding her guilty of some of the substantive counts and not guilty on some of the other counts, was inconsistent. Defendant has failed to establish that the verdict were inconsistent. Moreover, a challenge to a criminal conviction cannot be based on inconsistent jury verdicts. *See United States v. Powell*, 469 U.S. 57, 64-67 (1984). Accordingly, it is hereby

ORDERED that Defendants Winzer and Wade's Motions for New Trial [Docs. # 98 and # 99] are **DENIED**.

SIGNED at Houston, Texas, this 3rd day of **March, 2008**.



Nancy F. Atlas
United States District Judge